

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH  
JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,  
Petitioner,

v.

BILL HEARD CHEVROLET  
CORPORATION-NASHVILLE,  
a Tennessee corporation, also known as  
BILL HEARD CHEVROLET and BILL  
HEARD CHEVROLET-GEO,

Respondent.

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

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THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by BILL HEARD CHEVROLET CORPORATION — NASHVILLE, a Tennessee corporation also doing business as BILL HEARD CHEVROLET AND BILL HEARD CHEVROLET — GEO of Nashville, Tennessee ("Respondent"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") on behalf of DAVID A. MCCOLLUM, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

**WITNESSETH:**

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include conducting a direct mail solicitation offering members of the Nashville area with Spanish surnames free airline travel and other incentives to induce those consumers

to visit Respondent's dealership and purchase a vehicle. That promotion was printed on the front of the promotion in Spanish but disclosures required by the Tennessee prize, gift and award statute were printed in English only. This particular solicitation was mailed to approximately 15,000 consumers. The promotion also failed to include some clear and conspicuous disclosures required by the Tennessee prize, gift and award statute such as but not limited to, the verifiable retail value immediately adjacent to the listing of the prize, and the odds of winning each prize in Arabic numerals, immediately adjacent to the listing of the prizes. Respondent also failed to clearly and conspicuously disclose the total costs of all monetary obligations that a consumer must incur before being able to use the airline ticket such as the cost of the hotel rooms that must be purchased. As a result of the solicitation, approximately 225 consumers actually visited the dealership. All persons coming to the Respondent's dealership received the airline ticket discount booklet, a Bill Heard cap and coffee mug and \$5.00. None of the persons won any other of the promoted large cash prizes. Bill Crick was responsible for reviewing and monitoring advertisements for Bill Heard and Bill Crick approved the solicitation in question for distribution to Tennessee consumers. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

## **1. DEFINITIONS**

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of State of *Tennessee v. Bill Heard Chevrolet Corporation - Nashville, a foreign corporation also doing business as Bill Heard Chevrolet and Bill Heard Chevrolet -- GEO.*

1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

1.4 "Respondent" shall refer to Bill Heard Chevrolet Corporation — Nashville, Bill Heard Chevrolet and Bill Heard Chevrolet — GEO and/or any and all officers, owners, employees, agents and representatives of Bill Heard Chevrolet Corporation — Nashville.

1.5 "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Office of the Tennessee Attorney General and Reporter.

1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

## **3. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

## **4. PERMANENT INJUNCTION**

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall fully comply with Tenn. Code Ann. § 47-18-120 when offering a prize, gift, award, incentive promotion or thing of value to a consumer.

4.2 Respondent shall fully comply with Tenn. Code Ann. § 47-18-124 when offering a prize, gift, award, incentive promotion or thing of value to a consumer.

4.3 Respondent shall be prohibited from in any context making an offer or soliciting consumers in one language and then providing disclosures, disclaimers, restrictions or other information in another language.

4.4 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall clearly and conspicuously disclose the approximate verifiable retail price of each prize, gift, award, incentive promotion or thing of value offered. Additionally, Respondent shall have substantiation for the approximate verifiable retail value as required by Tenn. Code Ann. §§ 47-18-120(c)(1)(D) and (E) and shall provide that substantiation to the Division of Consumer Affairs within five (5) days of a written request.

4.5 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from failing to clearly and conspicuously in the initial offer state the name and street address of the person making the offer.

4.6 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited directly or indirectly from failing to clearly and conspicuously disclose in the initial offer, immediately adjacent to the prize or travel service offered, a statement of the odds, if applicable, in arabic numerals of receiving each item offered.

4.7 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited directly or indirectly from failing to clearly and conspicuously disclose the approximate total of all costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize, travel service, product or other service offered.

4.8 Respondent shall fully comply with the Federal Trade Commission Guidelines regarding the offering of free items to consumers.

4.9 Respondent shall be prohibited from directly or indirectly, using or employing symbols, logos or other representations that might lead a consumer to believe that the mailing is from a governmental entity.

4.10 Respondent shall be prohibited from directly or indirectly, representing that a person is employed by

the person mailing a solicitation, if such is not the case.

4.11 Respondent shall be prohibited from directly or indirectly, representing that a consumer will receive a free "vacation" if in fact that vacation is only airline travel and no hotel accommodations are included in the offering.

4.12 Respondent shall be prohibited from directly or indirectly, representing that "bank representatives" will be on site offering financing, if such is not the case.

## **5. RESTITUTION**

5.1 Respondent has represented and warranted to the State that no consumer has complained about Respondent's solicitation which is attached to the State's Petition. Further, no consumer has requested to cancel the purchase of a vehicle because of such solicitation or because the consumer alleges he/she only purchased the vehicle to obtain the offerings in the solicitation. As a result, the Respondent has represented and warranted to the State that no restitution is due any Tennessee consumer as a result of the violations of law engaged in by Respondent when distributing the solicitation attached to the State's Petition. Respondent understands that the State expressly relies upon Respondent's representations and if they are misleading, deceptive, false, incomplete, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order and request that Respondent be held in contempt or Request that Respondent's license to sell motor vehicles be revoked, if the State so elects.

5.2 Respondent further agrees if any consumer comes forward after entry of this Assurance and can demonstrate that he or she would not have bought the vehicle but for the offer of the prize or gift, Respondent will permit that consumer to cancel the transaction involved and receive a full refund of all monies paid upon return of the vehicle and executing the title back to Respondent.

## **6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE**

6.1 Respondent shall pay the sum of One Thousand Five Hundred and 00/100 Dollars (\$ 1,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

## **7. CIVIL PENALTIES**

7.1 Respondent shall pay the sum of Five Thousand and 00/100 Dollars (\$ 5,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made

by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Civil Penalty" on the day of execution of this Assurance.

## **8. CONSUMER EDUCATION FUNDING**

8.1 Respondent shall pay the sum of Two Thousand and 00/100 Dollars (\$ 2,000.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

## **9. MONITORING AND COMPLIANCE**

9.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its visit(s) to Respondent in audio or video form without notice to Respondent. The Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

## **10. PRIVATE RIGHT OF ACTION**

10.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may hold against Respondent.

## **11. PENALTY FOR FAILURE TO COMPLY**

11.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

## **12. REPRESENTATIONS AND WARRANTIES**

12.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

12.3 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

12.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

12.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of their officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

12.7 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt and/or Respondent's motor vehicle license revoked, if the State so elects.

12.8 Bill Heard Chevrolet Corporation — Nashville represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt and/or Respondent's motor vehicle license revoked, if the State so elects.

12.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

12.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

12.12 This Assurance and Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

12.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, a District Attorney General, Motor Vehicle Commission or other governmental entity from enforcing laws, regulations or rules against Respondent, including those relating to the same facts giving rise to this Assurance.

12.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

12.15 Respondent has been advised of its right to legal counsel in connection with this matter. If any Respondent declines to obtain the assistance of legal counsel, that Respondent has expressly waived its right to counsel by executing this Assurance.

12.16 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.17 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v.*



*United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

12.18 Respondent represents and warrants to the Attorney General that it intends to fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

### **13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

13.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules.

### **14. FILING OF ASSURANCE**

14.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

### **15. APPLICABILITY OF ASSURANCE TO RESPONDENT**

#### **AND ITS SUCCESSORS**

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15.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of its officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on it's or their behalf.

### **16. NOTIFICATION TO STATE**

16.1 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested, or other nationally recognized courier service

that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General  
Office of the Attorney General  
Consumer Protection Division  
425 Fifth Avenue North, 2nd Floor  
Nashville, Tennessee 37243  
(615) 741-1671

For the Respondent:

William T. Heard  
Bill Heard Chevrolet Corp. - Nashville  
5333 Hickory Hollow Parkway  
Nashville, Tennessee  
(615) 731-3000

James W. Cameron III  
Harwell, Howard, Hyne, Gabbert  
& Manner, P.C.  
1800 First American Center  
315 Deaderick Street  
Nashville, Tennessee 37238  
(615) 256-0500

16.2 For two (2) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may effect compliance with obligations arising out of this Assurance.

## **17. COURT COSTS**

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.